

REMARKS

The Examiner has rejected the claims at issue for the reasons of record and requests restriction for ten different species. In particular the Examiner alleges the claims are drawn to a variety of groups, as described below:

1. Group I claims are drawn to a method of determining the presence or risk of nasopharyngeal carcinoma (NPC) by levels of protein in NPC cells.
2. Group II claims are drawn to a method of determining said risk by nucleic acid levels in NPC cells.
3. Group III claims are drawn to a method of determining the type of NPC based on expression of a nucleic acid in NPC cells.
4. Group IV are drawn to a method of determining the type of NPC based on determining the levels of polypeptides in NPC cells.
5. Group V claims are drawn to a method of creating an expression profile characteristic of NPC nucleic acid sequences.
6. Group VI claims are drawn to the same expression profile referenced in Group V based on polypeptide sequences.
7. Group VII claims are drawn to diagnostic agents or kits for expression of RNA.
8. Group VIII claims are drawn to kits for expression of protein.
9. Group IX claims are drawn to a method of treating an individual with NPC or at risk of developing NPC by administering a demethylation agent in association with a second cancer treatment.
10. Group X claims are drawn to a method of screening for a substance capable of treating NPC in an individual.

Applicants hereby provisionally elect Group IX claims drawn to a method of treating an individual with NPC or at risk of developing NPC comprising administering a demethylating agent in association with a second cancer treatment. The claims readable on

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this election include claims 31-34 and new claims 43-45. Such election has been made with traverse and without prejudice or disclaimer of Applicant's right to traverse similar restrictions in future divisional or continuation applications. Furthermore, claims have been amended solely to reflect this provisional election.

The provisional election of the Group IX claims should not be construed as an abandonment of the invention of the non-elected claims of Groups I-VII or Group X. Applicant expressly reserves the right to file one or more divisional applications drawn to such non-elected Group.

Applicants respectfully assert that as a whole, the restriction requirement parsing out all ten Groups is improper, and that some of the Groups are not independent or distinct and also do not lack unity of invention. In fact, the Examiner has failed to explain why Groups III and IV are distinct from Group IX in a way that forces restriction under either PCT Rule 13.2 or 37 C.F.R. §1.475.

Applicants contend that the group IX claims, which are drawn to a method of treating an NPC based on the type of NPC, rely wholly on results that would be generated through the use of claims of Group III and IV to determine the type of NPC. Furthermore, that typing, whether by nucleic acid or polypeptide, is broadly encompassed within the scope of typing, and therefore is neither independent nor distinct and relies on the same special technical features, namely they are merely two species of the genus that could be drawn around NPC typing methodology. 37 C.F.R. §1.475 defines "special technical features" as "those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." In the instant application, it is not the nucleic acid or polypeptide that is the special technical feature, it is the ability to first identify the type of NPC (which is defined in both Groups III and IV) and then to treat a subject based on that definition (Group IX). The Examiner has made no contention that the inventions of these three Groups are in any way "independent" of each other nor has he explained why these

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Groups represent claims with different special technical features aside from the fact that what is used in each Group is subtly different.

While Applicants accept that these three Groups are patentably distinct from one another, they are clearly not independent or distinct inventions for the reasons stated above or as required under 37 C.F.R. §1.475. Therefore, Applicants respectfully contend this restriction election is improper and be removed.

In view of the above provisional election and arguments, an Office Action on the merits is respectfully requested at an early time.

If the Examiner notes any further matters which would be expedited by a telephonic interview, she is requested to contact Dr. Jennifer M. McCallum at the telephone number listed below.

It is believed that no fees are due in this matter; however, if a fee is due the Commissioner is authorized to charge it to deposit account No. 502679.

Respectfully submitted by:

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